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September 25, 1958

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W. Russell Hilliard, Director
Aeronautics Commission
Concord Airport
Concord, New Hampshire

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CONCORD, N.H.

Dear Mr. Hilliard:

This is in reply to your letter of September 23, 1958 in which you request our opinion as to whether or not Section 2 of Chapter 202 of the Laws of 1957 exempts from taxation aircraft landing areas owned by a city or town but located outside its boundaries.

Towns and cities are given authority to acquire land outside their boundaries for airport facilities by RSA 423. The pertinent provisions of this chapter are as follows:

"423:1 Acquisition of Land by Towns. Towns are authorized and empowered to construct, own, manage, or provide by contract or otherwise for the management of aircraft landing areas, either within or beyond the boundaries of the town, and for that purpose any town may take land in fee by gift or purchase, or by right of eminent domain as hereinafter provided, or may lease the same, and may erect thereon and maintain such buildings or other structures as may be necessary more fully to carry out the purpose hereof. Two or more towns may join in such action."

"423:3 --Land outside the Town. Whenever a town finds it necessary to acquire land for the purposes hereof beyond its boundaries and is unable to acquire it for a reasonable price by purchase or lease, the town may institute eminent domain proceedings by petition to the county commissioners, and the procedure followed by the commissioners as respects notice, assessment and payment of damages, entry and appeal shall, so far as applicable, be the same as that prescribed for the public utilities commission in the case of taking land by a public utility as provided in sections 1 to 13, inclusive, of chapter 371, RSA."

"423:4 -- Adjoining Lands. The provisions of the two preceding sections shall apply to the acquisition of partial rights in lands adjoining the landing areas in order to prevent any use of such lands as would hinder the proper use and development of the landing field."

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We further direct your attention to RSA 423:9 which provides as follows:

"423:9 Tax Exemption. All property and rights acquired by a city or town outside its boundaries, as provided in sections 1 to 4, inclusive, or as provided in any other statute relative to aeronautical facilities hereinbefore or hereinafter enacted, if said property and rights are not leased for profit, shall be exempt from taxation therein; but the city or town shall make payments, on or before the first day of December in each year, to each city or town in which such property or rights are located, of such sums as would have been assessed against said property and rights if the same had been included in the tax invoice for such year at the tax valuation of the same on April 1, 1940. Provided that in case improvements have been made on said property between April 1, 1940, and the date when acquired for aeronautical facilities, the payments to the city or town in which such property or rights are located shall be based upon the assessed value as of April first following such improvements."

By virtue of Laws of 1957 202:2 I., "lands and the buildings and structures thereon and therein and the personal property owned by the State, cities, towns, school districts, and village districts" are exempt from taxation. However, Laws of 1957 202:5 provides that nothing contained in said Chapter 202 "shall repeal any exemption granted by special act and existing on the effective date of this act."

Airport facilities owned by a town or city outside its boundaries, having already been exempted from taxation by virtue of RSA 423:9, which remains in full force and effect, it follows that no exemption arises by virtue of laws of 1957 Chapter 202. The payments provided for by RSA 423:9 are not taxes but payments in lieu of taxes which have been provided for by special act of the Legislature.

In brief, it is our opinion that the provisions of RSA 423:9 are still controlling and that where a city or town owns airport property outside its boundaries it must continue to make the payments in lieu of taxes provided for by RSA 423:9.

Very truly yours,

George T. Ray, Jr.
Assistant Attorney General

GTR, Jr/m
CC- Tax Commission